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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 CHAD THOMAS ELIE,

12 Petitioner,

13 vs.

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15 KELLY HARRINGTON, Warden, and  
16 EDMUND BROWN, JR., Attorney  
General of the State of California,

17 Respondents.

CASE NO. 09-CV-2920-H (PCL)

**ORDER**

**(1) DENYING MOTION FOR  
CERTIFICATE OF  
APPEALABILITY; &**

**(2) DENYING MOTION TO  
PROCEED IN FORMA  
PAUPERIS ON APPEAL**

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19 On June 9, 2011, the Court issued an order denying Petitioner Chad Thomas Elie's  
20 petition for writ of habeas corpus. (Doc. No. 28.) The Court also denied a certificate of  
21 appealability. (Id.) On June 27, 2011, Petitioner, proceeding pro se, filed a motion for  
22 extension of time to file a notice of appeal, request a certificate of appealability, and a motion  
23 to proceed in forma pauperis. (Doc. No. 30.) On June 30, 2011, the Court granted Petitioner's  
24 motion for extension to file notice of appeal and other related motions. (Doc. No. 31.) On  
25 September 15, 2011, Petitioner filed a notice of appeal (Doc. No. 32) along with a motion to  
26 proceed in forma pauperis on appeal (Doc. No. 33) and a motion for certificate of appealability  
27 from district court. (Doc. No. 35.)

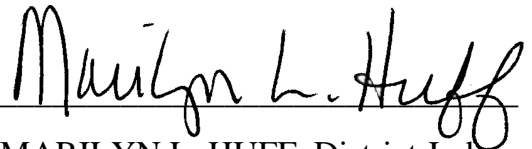
28 According to the Federal Rules of Appellate Procedure, a petitioner may not seek an

1 appeal of a claim arising out of state court detention unless the petitioner obtains a certificate  
2 of appealability from either the district judge or a circuit judge under 28 U.S.C. § 2253. See  
3 Fed. R. App. P. 22(b). Section 2253 states that a certificate of appealability may only issue if  
4 the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C.  
5 § 2253(c)(1). Where, as here, the district court has rejected the petitioner’s constitutional  
6 claims on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the  
7 district court’s assessment of the constitutional claims debatable or wrong.” Slack v.  
8 McDaniel, 529 U.S. 473, 483-84 (2000).

9       The Court previously denied a certificate of appealability. (See Doc. No. 28.) The  
10 Court will alternatively consider Petitioner’s current motion as a motion for reconsideration  
11 of that denial. The Court has carefully reviewed Petitioner’s original petition, this motion, and  
12 other related papers. From that careful review, the Court sees no good grounds for issuing a  
13 certificate of appealability in light of the controlling legal standards. Because Petitioner has  
14 not made a “substantial showing of a denial of a constitutional right,” Slack, 529 U.S. at 483-  
15 84, the Court declines to issue a certificate of appealability. Because the Court denies  
16 Petitioner’s request for a certificate of appealability, the Court denies as moot Peitioner’s  
17 motion to proceed in forma pauperis on appeal.

18       **IT IS SO ORDERED.**

19 DATED: September 20, 2011

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21 MARILYN L. HUFF, District Judge  
22 UNITED STATES DISTRICT COURT  
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